

Date of Decision: 2nd August 1995

SPECIAL CIVIL APPLICATION NO. 5604 of 1987

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri V.H. Patel, Advocate, for Shri H.L. Patel, Advocate, for the Petitioners

Shri V.B. Gharaniya, Asst. Govt. Pleader, for the Respondents  
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CORAM: A.N. DIVECHA, J.  
(2nd August 1995)

ORAL JUDGMENT

The action of removal of the cabins of the petitioners situated on Modasa Dhansura Road near Modasa S.T. Bus Stand is under challenge in this petition under Art.. 226 of the Constitution of India.

2. It is not necessary to set out in detail the facts giving rise to this petition. It is sufficient to note that the petitioners have their cabins on Modasa-Dhansura Road near the S.T. Bus Stand at Modasa. Their case is similar to those of the petitioners in Special Civil Applications Nos. 3589 of 1982 and 3719 of 1982 decided on 5th August 1994. In that case, the petitioners had their cabins on Veraval Sasan Road near the bus stand at Talala. In its Division Bench ruling of this court in the aforesaid two petitions, it has been held that no one has a right to carry on business in cabins or gallas on such roads. Sitting as a single Judge the aforesaid Division Bench ruling of this court is binding to me. Even otherwise I am in respectful agreement therewith.

3. Shri Patel for the petitioners has however urged that the respondents have not followed the procedure prescribed in sec. 202 of the Bombay Land Revenue Code, 1879 ('the Code' for brief), and as such their impugned action cannot be sustained in law. In support of his submission, Shri Patel has relied on the ruling of this court in the case of Khoda Dhor Panjara Pole Sanstha, Radhanpur and Anr. v. The State of Gujarat and Ors. reported in 1984 G.L.H. 970. Section 202 of the Code would be applicable to Government lands. Lands used for road passing through a town or a village would vest in the concerned local authority. In that view of the matter, sec. 202 of the Code will not be applicable.

4. Shri Patel for the petitioners has then submitted that the action of removal of the cabins of the petitioners is not taken by any local authority but by the Government officers. If the petitioners have no right to cling to their cabins or gallas on the public road, it is immaterial by whom they are removed. It is possible that they might have been removed therefrom at the instance of the concerned local authority.

5. In view of my aforesaid discussion, I have found no merit or substance in this petition. It deserves to be rejected.

6. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

7. At the oral request of Shri Patel for the petitioners, the operation of this judgment is stayed for a period of two weeks from today to enable the aggrieved petitioners to carry this matter by means of an appropriate proceeding before an appropriate forum. Direct service is permitted.

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